

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AARON WADDELL**

Claimant

VS.

**RANDALL AND VICKI STINNETT  
d/b/a STINNETT TIMBERS and/or  
BUYER OF STANDING TIMBER**

Respondent

AND

**WORKERS COMPENSATION FUND**

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Docket No. 1,005,112

**ORDER**

Claimant appealed the October 17, 2002 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

This is a claim for a December 5, 2001 accident. Judge Benedict determined that at the time of the accident claimant was working for respondent as an independent contractor rather than an employee. Consequently, the Judge denied claimant's request for benefits.

Claimant contends Judge Benedict erred. Claimant argues he was an employee at the time of the accident. Accordingly, claimant requests the Board to reverse the October 17, 2002 Order and grant him workers compensation benefits.

Conversely, both respondent and the Workers Compensation Fund request the Board to affirm the Judge's finding that claimant was an independent contractor at the time of the accident. In addition, the Fund maintains this accident is not compensable under the Workers Compensation Act as respondent did not meet the payroll requirements and, furthermore, the Fund should not be responsible for any benefits awarded claimant as respondent is not insolvent.

The issues before the Board on this appeal are:

1. Did claimant prove that he was an employee of respondent at the time of the accident?
2. If so, did respondent meet the payroll requirements of the Workers Compensation Act?
3. If so, is the Workers Compensation Fund liable for the award entered?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record compiled to date and after considering the parties' arguments, the Board finds and concludes that the October 17, 2002 preliminary hearing Order should be affirmed.

The Board recognizes that claimant sustained a serious back injury on December 5, 2001, when he was struck by a tree. At the time of the accident, claimant was cutting trees on land that had been leased by respondent. The record, however, fails to prove that claimant was working for respondent as an employee at the time of the accident.

It is often difficult to determine in a given case whether a person is an employee or independent contractor because the employer-employee and principal-independent contractor relationships share similar elements.<sup>1</sup> And there is no absolute rule for determining whether an individual is an independent contractor or an employee.<sup>2</sup> The relationship of the parties depends upon all the facts and the label that they choose to employ is only one of those facts. The terminology used by the parties is not binding when determining whether an individual is an employee or an independent contractor.<sup>3</sup>

But the primary test used by the courts in determining whether the employer-employee relationship exists is whether the employer has the right of control and supervision over the work of the alleged employee along with the right to direct the manner in which the work is to be performed. It is not the actual interference or exercise of the control by the employer but the existence of the right or authority to interfere or control that renders one a servant rather than an independent contractor.<sup>4</sup>

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<sup>1</sup> *Jones v. City of Dodge City*, 194 Kan. 777, 402 P.2d 108 (1965).

<sup>2</sup> *Wallis v. Secretary of Kans. Dept. of Human Resources*, 236 Kan. 97, 689 P.2d 787 (1984).

<sup>3</sup> *Knoble v. National Carriers, Inc.*, 212 Kan. 331, 510 P.2d 1274 (1973).

<sup>4</sup> *Wallis*, 236 Kan. at 102-103.

Moreover, in addition to the right to control and the right to discharge a worker, other commonly recognized tests of the independent contractor relationship are: (1) the existence of a contract to perform a certain piece of work at a fixed price; (2) the independent nature of the worker's business or distinct calling; (3) the employment of assistants and the right to supervise their activities; (4) the worker's obligation to furnish tools, supplies, and materials; (5) the worker's right to control the progress of the work; (6) the length of time that the worker is employed; (7) whether the worker is paid by time or by the job; and (8) whether the work is part of the regular business of the employer.<sup>5</sup>

As in other cases, some of the facts in this claim suggest claimant was working for respondent as an independent contractor but other facts suggest that claimant was working for respondent as an employee.

The following facts suggest claimant was respondent's employee at the time of the accident: claimant was working on a lease procured by respondent, claimant was working exclusively for respondent, claimant did not operate an independent business, respondent paid for claimant's motel expenses (according to claimant), respondent furnished the chain saws (according to claimant) and other equipment at the job site, claimant was working alongside one of respondent's employees at the time of the accident, respondent directed claimant in the manner that he wanted the trees dressed, respondent may have used claimant to cut timber in the future, and obtaining lumber could be viewed as a principal part of respondent's mill and pallet business.

Conversely, the following facts suggest claimant was an independent contractor at the time of the accident: claimant represented to respondent that he was experienced in cutting timber, the relationship between claimant and respondent was of short duration, claimant was responsible for supplying the chain saws (according to respondent's owner Randall Stinnett), claimant was responsible for providing his own transportation, claimant was responsible for reimbursing respondent for his motel expenses (according to Mr. Stinnett), claimant was responsible for his meal expense, claimant determined the hours he worked and how much timber he cut, claimant was not required to report his activities to respondent, claimant was to be paid a certain amount for each load, claimant controlled the progress of his work, claimant selected the trees to be harvested (within the size parameters set by Mr. Stinnett), claimant had previously requested that no taxes be withheld from his wages as he wanted to be treated as self-employed, and respondent did not direct or supervise claimant's work (other than instructing claimant how to dress the trees and the size desired).

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<sup>5</sup> *McCubbin v. Walker*, 256 Kan. 276, 886 P.2d 790 (1994).

After weighing and carefully considering those facts, the Board concludes that the evidence fails to establish that it is more probably true than not claimant was an employee of respondent at the time of the accident. Accordingly, this accident is not compensable under the Workers Compensation Act, and the other issues listed above are moot.

**WHEREFORE**, the Board affirms the October 17, 2002 preliminary hearing Order entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

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BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant  
Steven B. Doering, Attorney for Respondent  
Jeffrey E. King, Attorney for Fund  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation